

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3402 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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INDIAN PETROCHEMICALS CORPN

Versus

GHANSHYAM D PATEL

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Appearance:

Shri N.V.Anjaria for Petitioner  
None present for the Respondent.

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of Decision : 22/04/99

ORAL JUDGMENT

1. This writ petition is directed against the order of the Chief Judicial Magistrate, Vadodara dated 24.4.1997 Under this order the application, being Criminal Misc. Application No.155/97 filed by the respondent has been allowed and certificate with regard to birth date 28.8.1940 was granted and issued to the

respondent in place of birth date 4.4.1939. It has further been stated that certificate is issued to the respondent to be produced for correction and amendment in the record of his service.

2. Learned counsel for the petitioner contended that, Chief Judicial Magistrate, Vadodara has no jurisdiction to grant such certificate. Learned Chief Judicial Magistrate has not mentioned in the order under which provision this order has been passed. Not only this, learned counsel for the petitioner contended that, Chief Judicial Magistrate has not shown under which provision of the Criminal Procedure Code or any other Act he has jurisdiction to issue such certificate.

3. Lastly, it is contended that this order has been passed without notice and opportunity of hearing to the petitioner. Purpose of getting this certificate by the respondent is to get his recorded date of birth 4.4.1939 to be corrected, so the notice and opportunity of hearing has to be given to the petitioner.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

5. Nobody on behalf of the respondent is present to oppose this Special Civil Application. Reply to this Special Civil Application has been filed by the respondent. In the reply to this Special Civil Application the respondent has failed to give out under which provision he has filed the application before the Chief Judicial Magistrate. I fail to see how it can be a case of criminal nature and the Chief Judicial Magistrate how registered this application as Criminal Misc.Application and he has proceeded to decide this application and issued certificate of the date of birth to the respondent. Chief Judicial Magistrate could have exercised the power of issuing date of birth certificate, in case it has powers under any statute, but he has not given out in its order under which provisions of the Criminal Procedure Code or any other statute he has exercised this power and passed this order on the application which have been filed by the respondent before him. The respondent has also not mentioned the provisions under which the same has been filed.

6. It is true that mere non mention of the provision in the application may not be fatal to the same if power to pass order is traceable under some statutory provisions. But in this case no such power has been

given out by the court below in its impugned order nor the respondent pointed in his reply affidavit.

7. Thus the Chief Judicial Magistrate has passed this impugned order without jurisdiction. In such matter remedy would have been only to file civil suit for declaration, but not the remedy to file an application before the Chief Judicial Magistrate.

8. In fact under the order impugned in this Special Civil Application, the Chief Judicial Magistrate has made correction impliedly in the recorded date of birth of the petitioner. In the matter of correction of recorded date of birth in the service record of an employee, it is well settled law that an application for the same has to be made within a reasonable time and at the fag end of service. Otherwise also, no such correction of the recorded date of birth can be permitted on a belated application. In the service record of the respondent his date of birth has been recorded on the basis of his own document produced before the employer. The respondent produced before the employer his SSE certificate in which his date of birth has been shown to be 4th April, 1939. It cannot be said what to accept that in recording of date of birth in the service record, the employer has committed any illegality. Correction of date of birth in the service record is permissible only where by mistake of some other person it is wrongly recorded. It is the respondent's own document which is the basis of recording of his date of birth in his service record as 4th April, 1939.

9. In such matters otherwise also the Courts have very very limited powers of judicial review. Chief Judicial Magistrate in this case has exercised jurisdiction which otherwise he does not have. On the merits also, in view of the settled position of law at such belated stage otherwise also there is no question of correction of date of birth which is recorded in the service record of the respondent at the time of his entry in the service of the petitioner.

10. I find sufficient merits in the second contention of the learned counsel for the petitioner also. It is not the case of the respondent in the reply that impugned order has been passed by the Chief Judicial Magistrate after the notice and opportunity of hearing to the petitioner.

11. The respondent has admitted in the reply that the petitioner was not necessary party to those proceedings

by him before the Chief Judicial Magistrate and it was not a necessary party. The respondent has not disputed the fact that impugned order has been passed without notice to the petitioner. Sole defence of the respondent is that as the petitioner has no personal knowledge about the date of birth of the respondent, what useful purpose would have been served to implead it as party before the Chief Judicial Magistrate.

12. Whatever may be the approach of the respondent in the matter is not binding on the Chief Judicial Magistrate. Chief Judicial Magistrate being a Judicial officer has to consider this aspect and looking to the facts of the case and the purpose for which the respondent was seeking certificate of his date of birth, the petitioner was certainly a necessary party to these proceedings. It is really a shocking that the Chief Judicial Magistrate without considering this important aspect of the matter satisfied to decide this application and granted certificate of date of birth to the respondent for correction of his recorded date of birth in the service record without the notice and opportunity of hearing to the petitioner. It is not gainsaid that in fact the respondent has abused the process of the Court. It was the duty of the respondent to implead the petitioner as party to these proceedings.

13. If we go by the reply of the respondent I find that he made attempt with the employer to get the date of birth changed, but that has not been done and he has taken this decision against the petitioner behind its back. As a result of this decision, naturally it is the court order, recorded date of birth of the respondent has to be corrected which would result in financial burden on the petitioner. It is not simply order as what is projected by the respondent in the reply. It is, clearly a case where an attempt has been made, in which the respondent also succeeded to abuse the process of the Court. This order which has been passed by the Chief Judicial Magistrate may result in causing monetary loss to the petitioner and it may result in causing further consequences also. Principles of natural justice would have been followed by the Chief Judicial Magistrate before making this impugned order which precisely has not been done. It is the duty of the respondent and his advocate to see that no order prejudicial to the petitioner should be obtained from the judicial court behind its back. Advocates are there to assist the court to decide the matters correctly. But here, I find that advocate of the respondent has also not properly assisted the court which resulted in this order which is without

jurisdiction.

14. In the result, this Special Civil Application succeeds and the same is allowed. The order of the Chief Judicial Magistrate, Vadodara dated 24.4.1997 passed in Criminal Misc. Application No.155/97 is quashed and set aside. Nobody is present on behalf of the respondent. The respondent has contested this petition. This is a fit case where the petitioner to be awarded costs of this petition. The respondent is directed to pay Rs.2000/- as cost of this Special Civil Application to the petitioner. Rule is made absolute.

(S.K.Keshote,J.)

(pathan)